

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Lamont Ewell on May 12, 2006

DATED: May 30, 2006

On May 12, 2006, Michael Schachter, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Lamont Ewell. Mr. Ewell was represented by his counsel, Robert Friese, of Shartzis Friese LLP. Also in attendance were Rahul Khona and Eric Bell of KPMG, and Ray Sarola of Willkie. The interview took place in the law offices of Irell & Manella, in Los Angeles, and lasted approximately four hours.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Mr. Ewell, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

Mr. Schachter began by explaining that he did not represent Mr. Ewell and that no attorney-client privilege applied to the interview. Mr. Schachter stated that Mr. Ewell's statements would not be shared with other witnesses, but may be included in the Audit Committee's written report, which may be turned over to the government or made public. He explained that the government may also ask the Audit Committee for the written summary of this interview. The notes taken during this interview are protected attorney work product and are not a transcript of the interview. The Audit Committee would have to decide whether to turn over these notes if they were requested by the government.

Mr. Friese made a formal request for a copy of the interview summary for the purpose of checking for inaccuracies. Mr. Schachter noted this request.

Background

Mr. Schachter explained that this interview would cover some of the ground that Vinson & Elkins investigated as well as additional issues, including wastewater.

Mr. Schachter asked Mr. Ewell to explain his employment background. Mr. Ewell responded that he worked as a Fire Chief in Oakland, California before becoming the Assistant City Manager and then Acting City Manager of Oakland. His next position was City Manager of Durham, North Carolina, where he worked for three or four years before coming to San Diego to work as the Assistant City Manager for the City.

Mr. Schachter asked if he dealt with pension funding issues during his time in Oakland and Durham. Mr. Ewell responded that nothing he dealt with "came close" to the issues he faced in San Diego. In Oakland, there were challenges with paying bills and meeting financial obligations because the tax base was not strong, but he did not deal with anything in his prior experience similar to the situation in San Diego. Mr. Ewell stated that in Oakland and Durham, pension contributions were based on payroll, and to the best of his knowledge, these cities paid the full actuarial contributions.

Blue Ribbon Committee

Mr. Schachter asked if Mr. Ewell understood San Diego's pension funding system when he became Assistant City Manager in January 2001. Mr. Ewell replied that he did not. Mr. Schachter then asked for Mr. Ewell's understanding of why Mayor Murphy appointed the Blue Ribbon Committee (BRC) in 2001. Mr. Ewell stated that at that time there was a great concern about the City meeting its financial obligations, so the Mayor appointed the BRC to examine deferred maintenance, pension funding, and other issues. Mr. Ewell did not have a clear recollection of whether pension funding issues were present prior to the BRC Report. Mr. Schachter asked specifically whether the BRC looked into previously-existing pension issues, or whether pension issues first arose as a result of the BRC Report. Mr. Ewell replied that he thought the pension issues were a result of the BRC process, and noted that the BRC looked at many issues, of which pension was only one.

Mr. Ewell was shown the Blue Ribbon Committee's Report, dated February 2002 (Exhibit 1). Mr. Schachter then asked if the City Manager's Office played any role in assisting the BRC with its investigation. Mr. Ewell did not recall whether anyone in the City Manager's Office was assigned to assist the BRC, but he did recall that he would periodically receive requests for information from the BRC and whichever department possessed that information would forward it to Ed Ryan (City Auditor) and Terri Webster (Deputy City Auditor) to give to the BRC. Mr. Ryan and Ms. Webster would periodically mention to Mr. Ewell what they were working on, but Mr. Ewell stated that he did not have in-depth discussions with them concerning the BRC.

Mr. Schachter asked Mr. Ewell to explain the issue of deferred maintenance. Mr. Ewell stated that at the time of the BRC this issue was not a big concern, and was commonplace in the other cities in which he worked. The City's infrastructure (streets, buildings, pipes, sidewalks, etc.) required maintenance, and when the City lacked the funds for this expenditure, the maintenance was deferred into the future. Mr. Ewell did not know whether the City kept detailed recordings of the amount of deferred maintenance, and noted that this amount was estimated by City staff. He did not have any discussions about, or consider on his own, whether the City should track or disclose these costs.

Mr. Schachter asked if Mr. Ewell had ever discussed with anyone whether the BRC Report could be harmful to the City's bond ratings, and Mr. Ewell replied that he did not recall any such conversations. He stated that he interacted with Mr. Ryan and Ms. Webster on a fairly regular basis, and their main concern with the BRC Report was that it was too "diffused" and was not focused on specific issues. Mr. Schachter asked if, before the Report was issued, Mr. Ryan or Ms. Webster had raised any concerns about the BRC's investigation into pension issues, and Mr. Ewell replied that nothing stood out in his mind in this regard.

Mr. Schachter observed that the BRC Report was originally scheduled to be released in September 2001, but was delayed until after the Ballpark financing. Mr. Ewell stated that he had heard this allegation after the fact, from interviews with the SEC and other parties, but had no knowledge about the reason for any delay. Mr. Schachter asked if Mr. Ewell had spoken to other City employees about this delay, and he responded that this issue was raised by the United States Attorney's Office in 2004 or 2005 and Mr. Ewell directed an email query to be run on this topic. Mr. Schachter asked if his inquiry provided any information to support the allegation that the BRC Report was intentionally delayed due to the Ballpark financing, and Mr. Ewell replied that it did not. Mr. Ewell did not recall any discussions about this delay prior to the release of the BRC Report.

Mr. Ewell stated that prior to the issuance of the BRC Report, he did not have an understanding of how the City's pension system was funded. Mr. Schachter asked if he was aware of the February 2002 actuarial report that indicated a drop in the funding ratio to 89%. Mr. Ewell responded that he might have been aware of this report, but it did not stick out in his mind, and even if he was aware, it would not have been a significant piece of information to him at that time.

Mr. Ewell recalled reviewing the BRC Report when it was completed, but could not recall his impressions of the report other than a sense that the City had work to do. Mr. Schachter asked specifically whether Mr. Ewell had any concerns regarding the pension system at that time, and he responded that he did not have any "glaring" concerns. Mr. Schachter asked for his understanding of pension issues after reviewing the Report, and he responded that he understood the City was not fully funding the pension system and "needed to do a better job." Mr. Schachter then asked Mr. Ewell which matters concerned him the most after reading the Report. He responded that the issue of deferred maintenance concerned him the most, because he had dealt with firefighters and policemen and they told him that new equipment was behind schedule. Mr. Ewell stated that he was disappointed that the Report did not address why San Diego's revenues were lower than those for comparable cities. He noted that the Report mentioned this issue but stopped short of providing a solution.

Mr. Ewell stated that he did not recall being overly troubled by pension issues after reading the BRC Report because the system was 88% funded at that time, which was "pretty healthy." His only recollection was that he felt it was important to fully fund the actuarial contributions. Mr. Schachter asked if Mr. Ewell knew Richard Vortmann (BRC Member) and he replied that he did not know him personally. Mr. Ewell did not know in 2002 or 2003 that Mr. Vortmann had concerns that the Report was toned down, but later came to learn this information.

Mr. Ewell was shown a memorandum from Mayor Murphy to the City Council dated April 4, 2002, regarding the recommendations made in the BRC Report (Exhibit 2). Mr. Ewell did not recall this document. He did not recall that the Rules Committee referred certain of the BRC recommendations to the CERS Board, or that the CERS Board was slow in responding. Mr. Schachter asked if Mr. Ewell was involved with the Pension Reform Commission (PRC), and he responded that his only involvement was in assigning Pat Frazier (Deputy City Manager) to assist the PRC. Mr. Ewell believed that the PRC was given "a clean slate" to look at the pension system and make recommendations. The only discussions Mr. Ewell recalled having regarding the PRC were discussions with Ms. Frazier to make sure she had

help in assisting the PRC because she had complained about this assignment taking her away from other tasks.

City Manager's Office

Mr. Schachter asked if Mr. Ewell viewed financial reporting as within his job description as Assistant City Manager. Mr. Ewell responded that his job description and actual practice were different things. He stated that he would periodically review financial reports that went to the Council (such as costs of operations or other estimates), but would not review the City's financial statements. Mr. Schachter asked specifically whether Mr. Ewell had a role in reviewing the City's bond disclosures and CAFRs (Comprehensive Annual Financial Report), and he responded that he did not. He stated that the Financial Division, which Pat Frazier oversaw, and the Auditor's Office were responsible for the review of the bond disclosures and CAFRs. Mr. Schachter noted that Ms. Frazier reported to Mr. Ewell, and he responded that she did, but that responsibility within the City was very "balkanized," and financial statements were handled by the Financial Division.

Mr. Ewell did not think that this balkanization was a result of Michael Uberuaga's (City Manager) management style, but was something that he inherited. According to Mr. Ewell, Mr. Uberuaga was a "hands-off" manager and was process-oriented. Mr. Ewell stated that Mr. Uberuaga was sometimes overbearing and that when an urgent matter arose, he tended to unravel and create a deeper crisis. Mr. Ewell further described him as a delegator and risk-averse, and observed that he always seemed uncomfortable making decisions.

Mr. Schachter asked Mr. Ewell to explain the role of the Assistant City Manager. Mr. Ewell explained that he dealt with day-to-day issues regarding the delivery of services to City residents, such as fire and police. He noted that all City agencies reported to him on the City's organizational chart, but stated that he focused on service delivery.

Mr. Schachter asked Mr. Ewell if he knew of any interaction between Mr. Uberuaga and Ms. Frazier. Mr. Ewell replied that they did interact, but their discussions were "sterile"; they did not get along well and their conversations were "a drudgery" for both of them. Mr. Ewell did not know why they did not get along, but stated that Mr. Uberuaga had a standoffish approach and others saw him as condescending and insensitive. This view of Mr. Uberuaga existed before Mr. Ewell arrived in the City Manager's Office, and was the reason why others in the City used him as an intermediary to communicate with Mr. Uberuaga. Mr. Ewell explained, however, that he was not a "bottleneck" to Mr. Uberuaga and certain issues "went around" him, directly to Mr. Uberuaga.

Mr. Schachter stated that in observing the interaction between the Mayor, City Council, and City Manager's Office, there were instances where the City Manager acted in a politically expedient fashion that would only have had consequences for the Mayor or Council. He gave the example of the City Manager telling the City Council that it did not need to change the wastewater rate structure after the City Manager received a Cost of Service Study (COSS) that concluded rates should be changed. Mr. Schachter asked Mr. Ewell to explain the nature of the relationship between the City Manager and the Mayor and Council that allowed the Mayor or Council to direct the City Manager on certain issues. Mr. Ewell responded that the relationship between these parties varied from city to city. In a City Manager form of government, the City

Manager is the CEO of the City and makes decisions on behalf of the Mayor and City Council. Mr. Ewell stated that in larger cities that use this form of government, this relationship might be more "politicized." In smaller cities, he explained, there is less political pressure and officials act in a manner they feel is appropriate. Mr. Ewell stated that in San Diego it was not uncommon for the City Manager to "run [an idea] up the flagpole" to the Mayor and Council for feedback on how it should be dealt with.

Mr. Ewell stated that the Mayor and Mr. Uberuaga had a "professionally-based" relationship which did not extend outside of that boundary. Mr. Ewell observed that it was not uncommon for Mr. Uberuaga to discuss issues with the Mayor, but stated that these conversations were to get the Mayor's opinion; he did not know if the Mayor had ever directed Mr. Uberuaga to take certain action.

Mr. Schachter asked if there were any Council members that Mr. Uberuaga would listen to above others. Mr. Ewell replied that he did not recall any instance where Mr. Uberuaga favored one Councilmember over another. He called Mr. Uberuaga a "straight-shooter," and stated that he did not take risks, but understood the line of ethical behavior and Mr. Ewell never knew him to cross this line.

Mr. Schachter asked if Mr. Uberuaga acted independently or if the Mayor or Council made the decisions on important issues. Mr. Ewell responded that Mr. Uberuaga was always seeking advice and formed his opinion on issues based on the feedback he received from others. Mr. Ewell stated that Mr. Uberuaga was "focused upward" towards the Mayor and Council. Mr. Ewell noted that he would not be surprised, but did not know as a fact, that Mr. Uberuaga would seek the input of the Mayor and Council and his ultimate decisions would reflect their beliefs.

Meet & Confer

Mr. Schachter then asked Mr. Ewell to explain the Meet & Confer process. Mr. Ewell stated that when union contracts were about to expire, the City entered into Meet & Confer negotiations to discuss enhancements to these contracts. There were specific, regular meetings that took place on dates agreed to by the parties involved where the parties would exchange proposals and negotiate. Mr. Ewell sat in on weekly meetings which briefed the participants about the events of the prior week. Mr. Uberuaga, Elmer Heap (Deputy City Attorney), Mike Rivo (Deputy City Attorney), Cathy Lexin (Human Resources Director), Dan Kelley (Labor Relations Manager), Bruce Herring (Deputy City Manager), George Loveland (Deputy City Manager), and periodically Ed Ryan attended these meetings.

According to Mr. Ewell, in 2002 the City entered into Meet & Confer negotiations and sought to ensure that its benefits package was competitive for the region. The City examined benefits offered by other regions and realized that it fell short in a number of areas. Since the City was short on cash flow, it turned to pension benefits as a way to increase compensation. Mr. Schachter asked if Mr. Ewell recalled any discussions about problems with increasing pension benefits due to funding issues. Mr. Ewell responded that in Spring 2002, the City began to hear that it was approaching the trigger and did not have enough money to pay the \$25 million that would become due, so the discussion turned to the use of pension benefits instead of salary increases. Mr. Ewell recalled that the Auditor's Office and Cathy Lexin, among

others, had mentioned the trigger. He stated that it was through these labor discussions that he first learned that the City was approaching the trigger. At that time, the market was down and investment returns were less than projected. This was also around the time that Mr. Ewell began to learn about MP-1. Mr. Schachter asked Mr. Ewell for his understanding of why the funding ratio was approaching the trigger and he responded that he was told that "it was all market-driven, so the pension investment returns were low."

Mr. Schachter asked Mr. Ewell if he was ever told that the City's underfunding contributed to the drop of the funding ratio, and he responded that he did not recall being told this information. Mr. Schachter asked whether, if he had heard this information, it would have concerned him. Mr. Ewell replied that looking back, it should have, but at that time he was still learning about MP-1 and the pension system. He noted that it was odd to him that the City's underfunding had gone on for so long and was thought to be appropriate.

Manager's Proposal 2

Mr. Schachter asked Mr. Ewell what solution was discussed to deal with these problems. Mr. Ewell stated that MP-2 was brought up as the solution, though he could not recall who first mentioned this concept. He explained that MP-2 was designed to address the drop in funding ratio while remaining competitive with compensation for employees. The City knew that it had a duty and obligation to fund the pension system, but the question was how to make the necessary payments. It was not politically feasible to cut services or reduce expenditures for services like firefighters and police, which were a majority of the City's costs. Mr. Ewell stated that MP-2 allowed the City to reach actuarial funding, but gave the City time to reach that level without paying the \$25 million under the trigger. Mr. Schachter asked how Mr. Ewell arrived at the \$25 million amount, and he responded that someone had told him this was the result of hitting the trigger. It was later on that he learned that there were two interpretations about this effect.

Mr. Schachter asked if there was any discussion about a legal requirement to fund the pension system under actuarially determined rates. Mr. Ewell replied that there were no such discussions, and that his state of mind at that time was that the City's practice must have been legal because it had been vetted by attorneys and had been the accepted practice. Mr. Schachter asked if the City's first proposal was to drop the trigger. Mr. Ewell responded that during the course of conversations, the City felt the trigger would be hit and it would have to deal with a \$25 million payment. The thought arose at that time to approach CERS about reducing the trigger to 75% and increasing the contribution rate over time to avoid a lump-sum payment under the existing trigger. Mr. Ewell did not recall any thoughts about the chance that the CERS Board would approve such a proposal at that time, but stated that "this was the best alternative we had at the time." Mr. Schachter asked if Mr. Ewell recalled any discussions about whether the CERS Board could approve such an agreement consistent with its fiduciary obligations. Mr. Ewell responded that there were no such discussions and that the CERS Board had approved this kind of proposal before. Mr. Ewell did not recall whether anyone expressed confidence at this time that the CERS Board would approve the proposal.

Mr. Schachter then asked whether the BRC Report was considered or discussed among City officials at that time. Mr. Ewell did not recall discussion about the BRC and did not recall connecting the BRC with the Meet & Confer process himself. He stated that the question

he faced was how to keep services in place, remain competitive, and meet pension funding requirements. Mr. Schachter asked why he did not connect the BRC Report with the challenges of Meet & Confer, and Mr. Ewell replied that he did not "internalize the report to that level," and was in the middle of figuring out a budget at that time. He stated that because he was on the operational side, and not the pension side, he didn't concern himself with this issue. Mr. Friese noted that Mr. Ewell was the Assistant City Manager, not the City Manager, at that time. Mr. Ewell further stated that he had no responsibility to the CERS Board, or for pension funding or the funding ratio. He was delivering services and creating a budget that allowed him to do that. Mr. Schachter asked who had responsibility for pension issues, and Mr. Ewell responded that he was new to the City at that time, and thought the CERS Board was responsible.

Mr. Schachter asked if the concern about hitting the trigger was the result of any analysis that was performed. Mr. Ewell responded that he did not recall. Mr. Schachter then asked if there was a concern that the City would hit the 75% trigger. Mr. Ewell responded that there was no such discussion, and that a 75% floor would provide enough room for the City to work back to full actuarial contributions. He stated that he did not know why 75% was the correct number, just that it would be sufficient to keep the City healthy and allow it to make full contributions.

Mr. Ewell was shown a memorandum from Cathy Lexin and Elmer Heap to the Mayor and City Council dated June 14, 2002, regarding the modified proposal to the CERS Board (Exhibit 3). Mr. Ewell stated that he had seen this document before, but did not have a role in preparing it. He did not recall whether he saw this memorandum before it was sent to the Mayor and Council, but stated that he did not have to approve it before it was sent out. Mr. Ewell attended closed session meetings on this issue and stated that in these meetings, staff explained the challenge the City faced with the trigger and presented the modified proposal. Mr. Schachter asked if Mr. Ewell recalled any discussion about the contingent nature of the pension benefits. Mr. Ewell recalled that the City was willing to make concessions with the unions provided the CERS Board agreed to relief, and stated that this was a contingency by definition. Mr. Ewell did not recall any discussions about the prospects of the CERS Board accepting this proposal. Mr. Schachter asked if he recalled discussions about whether the CERS Board could have accepted the proposal in keeping with its fiduciary duties, and Mr. Ewell responded that he did not recall any such discussion and thought the proposal would have been acceptable because the 1996 agreement had been in place.

Mr. Ewell was next shown an email from Councilmember Byron Wear to Cathy Lexin and others, dated June 23, 2002, regarding the CERS Board's vote on MP-2 (Exhibit 4). Mr. Ewell did not recall receiving this document, but did recall seeing it while preparing to give testimony. Mr. Friese stated that Mr. Ewell was copied on this email which was sent to fifteen recipients, and Mr. Schachter noted this comment. Mr. Schachter stated that Councilmember Wear seemed angry at Ms. Lexin in this email, and asked Mr. Ewell if he recalled Ms. Lexin making any assurances to the Council that the CERS Board would approve MP-2. Mr. Ewell responded "not at all." Mr. Schachter asked if Mr. Ewell agreed, after reading this email, that Councilmember Wear appeared put off in some way. Mr. Ewell replied that because he knew Councilmember Wear, he was unable to determine if this email was reflective of a certain tone or not. He explained that Councilmember Wear was constantly looking for political cover and suggested this could have been his goal in writing this email. Mr. Ewell called him a "wheeler-

dealer” and speculated that Mr. Wear might have made commitments of his own and sent the email because he felt embarrassed.

Mr. Schachter asked Mr. Ewell if he recalled hearing that CERS’s fiduciary counsel had raised concerns about dropping the trigger, and he responded that Ms. Lexin informed him of this after a meeting. Mr. Ewell stated that he was not surprised to hear about the fiduciary counsel’s concerns because MP-2 was only a proposal and no one believed it was a “done deal.” He did not recall reacting to the fiduciary counsel’s concerns because MP-1 had been in place since 1996 and he assumed that it was proper. Mr. Ewell stated that his impression was that certain elements of the proposal were not satisfactory to the CERS Board so the City needed to reconsider certain elements of the proposal.

Mr. Schachter asked if Mr. Ewell was concerned that Ms. Lexin worked for the City and was also a trustee on the CERS Board. He responded that he was not concerned because this structure was required by the City Charter. He also noted that this structure was consistent with other retirement boards; CALPERS (California Public Employees’ Retirement System) also has employees on its board. Mr. Ewell stated that he was concerned, however, that Ms. Lexin would have to wear “two hats,” since she had a fiduciary duty as a Board member and a separate role as the Human Resources Director.

Mr. Schachter asked if Mr. Ewell knew that Michael Aguirre had threatened a lawsuit against the CERS Board while he was a private attorney. Mr. Ewell replied that he learned of this at some point. Mr. Ewell stated that he did not know why Mr. Aguirre would have sent a letter to the CERS Board, and that he did not understand anything that Mr. Aguirre has done.

Mr. Ewell was shown a memorandum from Bruce Herring to Lawrence Grissom dated July 3, 2002, regarding MP-2 (Exhibit 5). Mr. Ewell stated that he was familiar with this document, but only from his preparation for testimony. Mr. Ewell stated that he had no role in preparing this document and did not review it before it was distributed. He knew that Mr. Vortmann was on the CERS Board but did not recall him raising questions regarding MP-2. Mr. Schachter asked Mr. Ewell why he was not involved in discussions concerning the preparation of this memorandum. Mr. Ewell responded that the City’s structure was balkanized and Mr. Uberuaga would go directly to the person who could help with a given matter. In this instance, Mr. Uberuaga went to Mr. Herring. Mr. Ewell did not recall participating in any discussions regarding this document.

Mr. Schachter asked if Mr. Ewell knew that in November 2002 when the Council approved MP-2 it also agreed to indemnify the CERS Board. Mr. Ewell responded that he knew of this fact only from preparing for testimony. Mr. Schachter asked if Mr. Ewell had an independent recollection of the CERS Board’s request for indemnification. Mr. Ewell recalled that the Board had asked for indemnification and the Council discussed this request. Mr. Ewell was not certain that he was present for these discussions, but assumed that he would have been since they would have been in closed session. Mr. Ewell did not recall the reason the CERS Board had requested to be indemnified.

Mr. Schachter asked Mr. Ewell if he recalled the CERS Board’s request for indemnification having been tied to concerns about its approval of MP-2. Mr. Ewell responded

that he assumed this request was tied to concerns with MP-2 because it came up around the same time. Mr. Ewell stated that he assumed indemnification was part of the Board members' service on the Board and that the Council was simply memorializing this. Mr. Schachter asked if this request served as a warning about MP-2, and Mr. Ewell responded that it did not because MP-1 had been approved and vetted by counsel so he did not believe there was anything improper with MP-2. At this point in the interview, Mr. Friese stated that there was also a tax issue at that time concerning whether certain payments could have been made from the unions to the City.

Presidential Leave

Mr. Schachter asked Mr. Ewell to describe any discussions he had regarding Presidential Leave benefits. Mr. Ewell explained that union presidents had the choice whether to work full-time or part-time for their union. If they worked full-time they would be paid by the union and the City would grant them unpaid leave. If they worked part-time, they would remain on the City payroll and get time off for their union work. Mr. Ewell stated that two out of the four presidents of bargaining units chose to take leave from the City without pay to serve as full-time presidents. The other two worked for the City and took time off to deal with their union obligations, and Mr. Ewell stated that there was a need to memorialize this structure.

Mr. Schachter asked Mr. Ewell about the impact that these arrangements had on the union presidents' retirement benefits. Mr. Ewell stated that the two presidents who chose to be paid by the unions were receiving a higher salary than the other two, and their pension contributions were made by the union to CERS. The Police Officer's Association (POA) President (Bill Farrar) was entering DROP (Deferred Retirement Option Plan) around that time and his highest annual salary was being determined from his union salary. Mr. Ewell stated that he had heard from Cathy Lexin (who had herself heard from Lawrence Grissom) that both the POA President and Judie Italiano (MEA President), who were both on leave from the City without pay, were having contributions to the retirement system made on their behalf (by their unions) that were higher than the contributions that would have been made by the City if they remained on the City's payroll. The problem this caused was that these two union presidents were nearing retirement (or DROP) and would be receiving higher retirement benefits than the City had realized. Mr. Ewell stated that he was unhappy that this issue arose during Meet & Confer.

Mr. Schachter asked Mr. Ewell to explain DROP. Mr. Ewell replied that once an employee reached retirement age, they could enter into an annuity where the City, instead of paying 7% towards that employee's retirement contribution, would pay 3% into an annuity and the employee could receive these funds over time. The City would thereby reduce its contribution by 4% and the employee would be allowed to continue working and receive annuity payments.

Mr. Ewell recalled that in April 2002, he went to the Council (in closed session) and recommended that the Firefighter's Union President (Ron Saathoff) not be given retirement benefits determined by the higher contribution rates of the POA and MEA Presidents because his own contributions were not made at a higher rate than other City employees. Mr. Ewell stated that there was discussion at this meeting that reflected a general belief that the City should treat all union presidents in the same manner. The following week a proposal was brought forth to treat all union presidents the same and calculate their retirement benefits using their highest union salary, and to ensure that future union presidents did not receive this enhanced benefit.

Mr. Ewell noted that the POA and MEA presidents had been contributing at this higher rate for over ten years, and that the Police Union had threatened litigation regarding this issue.

Mr. Ewell believed that Mr. Saathoff was "brought into the mix," as a result of this general sense to treat all union presidents identically regarding pension benefits. Mr. Schachter asked if he recalled any discussions about using Presidential Leave benefits as a "carrot" to get Mr. Saathoff to support MP-2 on the CERS Board, and Mr. Ewell responded that he did not. Mr. Ewell stated that he had since considered this possibility on his own, and did not recall any indications that these benefits were used to coerce Mr. Saathoff.

Mr. Ewell did not recall any attempts to delay the grant of Presidential Leave benefits to Mr. Saathoff. He stated that his understanding was that the City's negotiations with unions and Presidential Leave benefits were on a "parallel track," and were both contingent on the CERS Board's approval of MP-2. Mr. Ewell stated that this contingency ran through November 2002. He stated that during preparation for court testimony, he learned that at some point Presidential Leave benefits had been considered separately from the union benefits negotiated during Meet & Confer. He explained that he learned this from a conversation with Judie Italiano where she told him that Mr. Uberuaga informed her in June or July 2002 that he was satisfied with the Meet & Confer negotiations and was "moving forward." Mr. Ewell stated that Mr. Uberuaga never told him that there was a "break" in the contingency.

Mr. Schachter asked Mr. Ewell if it would have been possible for the City to pay the increased pension benefits without CERS's approval of MP-2. He responded that he thought at the time that the City would be unable to pay these benefits without reducing services, and that the contingency ran through November 2002. He stated that it would have been unlike Mr. Uberuaga to pick up the phone and call someone with this type of information about MP-2, but this was the story he was told by Ms. Italiano.

Mr. Ewell was shown a memorandum from Ms. Lexin and Mr. Heap to the Mayor and Council dated July 8, 2002, regarding "Contingent Retirement Benefits and Proposal to SDCERS" (Exhibit 6). Mr. Schachter directed Mr. Ewell to the second paragraph under the "Recommendation" heading and asked if he recalled an arrangement whereby a CERS Board member would have made a proposal to the Board to reduce the trigger. Mr. Ewell responded that he did not.

Mr. Ewell was then shown a Manager's Report dated November 20, 2001, regarding a modification to the Legislative Officers Retirement Plan (Exhibit 7). Mr. Schachter asked him to explain the Legislative Officers Retirement Plan (LORP), but Mr. Ewell responded that he did not know much about it, except that it applied to Council members. Mr. Ewell did not recall any modifications to LORP around that time, but did recall a question by a Council member about including other individuals in changes to LORP. Mr. Schachter asked if he recalled a discussion about adding the City Attorney to this program, and Mr. Ewell responded "vaguely." Mr. Schachter asked if including the City Attorney in LORP might have been intended to induce the City Attorney's support for modifications to the program. Mr. Ewell responded that he did not think this was the motivation and called Casey Gwinn (then-City Attorney) a "straight-laced guy" who would never agree to such a deal.

Purchase of Service Credits

Mr. Schachter asked Mr. Ewell to explain his understanding of the purchase of service credit (PSC) program. Mr. Ewell responded that through this program an employee was able to purchase up to five years of creditable service based on a percentage of his gross salary. Mr. Ewell stated that he was not aware that these credits were priced below cost. He purchased five years himself under this program when he first came to work for the City, and was told that San Diego's retirement system had reciprocity with his old retirement system. He stated that after he began working in San Diego the City told him that it had made a mistake and there was no reciprocity, so he examined his options under CERS. Mr. Ewell stated that he initially did not want to work in San Diego because of its ten-year vesting requirement, which was unusual; City Managers and Assistant City Managers rarely work for ten years. Mr. Ewell was told that five years under the PSC program would cost around \$125,000, but no one suggested to him that this was below cost.

Mr. Ewell stated that Mr. Aguirre, after he was elected as the City Attorney, stated that people were receiving discounts under the PSC program. After hearing this allegation, Mr. Ewell emailed Larry Grissom and Paul Barnett because he did not want to receive a discounted price. Mr. Barnett responded to Mr. Ewell that he had paid the correct price, and noted that actuarial factors determined whether time was purchased above or below cost. Mr. Schachter asked if Mr. Ewell understood that the PSC program contributed to the underfunding of the pension system, and he responded that he did not and assumed that the purchase price kept the system whole.

Shipione Allegations

Mr. Schachter asked Mr. Ewell if he had heard of Diann Shipione's objections to MP-2 before the November 18, 2002 Council meeting. He responded that he had not, although he had heard comments about her personally. Mr. Ewell stated that he had heard that Ms. Shipione was not credible and was motivated to support Pat Shea, her husband, who Mr. Ewell heard was well-connected. Mr. Ewell explained that Ms. Shipione arrived at the November 18 Council meeting and alleged that fraudulent acts were taking place. Mr. Ewell stated that the Council voted to approve the benefits, then directed staff to respond to her allegations. He stated that this assignment would have gone to the Human Resources Department, and believed that Cathy Lexin had drafted a response to Ms. Shipione's allegations.

Mr. Ewell stated that sometime in early December 2002, he walked into a meeting in which Mr. Uberuaga and Ms. Lexin were refusing to sign a letter responding to Ms. Shipione's allegations. Mr. Ewell stated that Ms. Lexin refused to sign because of a prior relationship with Ms. Shipione, but he did not further explain this comment. In what he called an "unintelligent decision," Mr. Ewell signed the letter after asking Ms. Lexin if it was true and after softening some of the language. Mr. Schachter asked Mr. Ewell what he had heard about Ms. Shipione at that time. Mr. Ewell responded that he had heard questions about her credibility and motives from Cathy Lexin, and perhaps from Mary Vattimo, Terri Webster, and others. He noted that he did not "get caught up in this."

Mr. Friese asked Mr. Ewell if he was aware at that time of a failed development deal involving Ms. Shipione's husband. Mr. Ewell replied that he knew that a group of investors led

by Pat Shea were interested in turning the Brownfield airport into a cargo facility, but stated that he considered this hearsay and dismissed it. Mr. Schachter asked if the comments Mr. Ewell heard about Ms. Shipione's credibility were tied to her statements regarding MP-2. Mr. Ewell replied that he heard comments about Ms. Shipione concerning "a whole host of things," including that she acted with strange behavior in Retirement Board meetings, and made out of context statements and alleged conspiracies. Mr. Ewell noted that he had not met Ms. Shipione and did not know her, so these comments did not mean anything to him. Mr. Schachter observed that it seemed to him that the comments Mr. Ewell heard about Ms. Shipione related to her allegations regarding MP-2, and Mr. Ewell replied that he did not recall these comments all relating to MP-2, and "vaguely remembered" hearing comments prior to that time.

Mr. Ewell stated that he remembered Ms. Shipione's allegations in the November 18, 2002 Council meeting and that this was the first time he had seen her in person. Mr. Schachter asked Mr. Ewell what comments he had heard about Ms. Shipione that caused him to discount her letter, which appeared well-researched and well-written. Mr. Ewell responded that he did not recall specifics, just general comments about her credibility and abnormal behaviors. He stated again that he did not know Ms. Shipione and that these comments "just passed [him] by." Mr. Ewell stated that he recalled her comments at the November 18 Council meeting and recalled the Council asking the City to respond. Mr. Schachter asked Mr. Ewell for his impressions of Ms. Shipione as she spoke at this meeting, and he replied that she seemed "normal and articulate." Mr. Schachter asked if she was asked any questions at this meeting, and Mr. Ewell replied that he did not know but that the meeting was videotaped.

Mr. Friese stated that some people thought Ms. Shipione did not write the November 18 letter, and stated that he and Mr. Ewell thought that Pat Shea wrote it. Mr. Friese stated that Mr. Ewell supervised eleven thousand people at the City and could not do everything himself. He had to rely on others, and trusted Ms. Lexin, who he had faith in.

Mr. Schachter observed that it seemed strange that the Council approved MP-2 and then asked the City Manager to report back to the Council in response to Ms. Shipione's letter. Mr. Schachter then asked Mr. Ewell to explain the purpose of the City Manager's response. Mr. Ewell stated, non-responsively, that the Council had been assured that MP-2 was legal. Mr. Ewell stated that the Council did not want to appear dismissive of Ms. Shipione's allegations, but was not persuaded of their veracity. Mr. Ewell described the December 6 letter as "perfunctory."

Mr. Schachter asked Mr. Ewell why the Council decided to move forward and vote on MP-2 at the November 18, 2002 meeting. Mr. Ewell stated that the Council had gained assurances that the proposal was legal. He explained that when legal counsel signed off on the proposal and the CERS Board accepted it, "you could see why [the Council] would have discounted [Ms. Shipione's] concerns." Mr. Schachter asked Mr. Ewell if he had read Ms. Shipione's November 18 letter, and he responded that he had read it at the time he signed the December 6 letter. He stated that he felt Ms. Shipione's November 18 letter was "comprehensive," but that he did not "really understand all these issues." Mr. Ewell stated that Ms. Shipione's November 18 letter did cause him concern, but he believed that the City had taken legally appropriate steps, Ms. Shipione was viewed as "less credible," and he had no reason to doubt City staff.

Mr. Schachter asked Mr. Ewell if he had inquired of anyone other than Ms. Lexin if the information contained in the response to Ms. Shipione was correct, and he replied that he did not. Mr. Schachter asked Mr. Ewell why Mr. Uberuaga did not want to sign this letter. Mr. Ewell stated that "you would have to know [Mr. Uberuaga]"; he was risk-averse, and did not like to be involved in controversy. Mr. Ewell stated that he had assumed Mr. Uberuaga did not want to sign this letter because of the nature of Ms. Shipione's allegations, but Mr. Ewell noted that Mr. Uberuaga never explained why he did not want to sign the letter.

Mr. Schachter asked Mr. Ewell why he was willing to sign this letter when Mr. Uberuaga was not. Mr. Ewell explained that Mr. Uberuaga did not like to sign many things because he did not want to have to justify or explain his statements. Mr. Ewell stated that he wanted to get the letter sent out, so when he walked into the meeting between Mr. Uberuaga and Ms. Lexin and they were discussing who would sign the letter, he got assurances, softened the language, and signed it. Mr. Friese asked Mr. Ewell if this interaction was consistent with Mr. Uberuaga's style, and Mr. Ewell replied that it was "very consistent," and that Mr. Uberuaga was always delegating these tasks to others. Mr. Ewell stated that there were other instances where Mr. Uberuaga would not sign documents that were "politically combustible," because "he wouldn't touch volatile items." Mr. Ewell stated that Mr. Uberuaga would ask him to speak with people on his behalf because he did not want to "engage in intense issues." Mr. Ewell again stated that he had no reason to doubt Ms. Lexin.

Mr. Ewell recalled that a day or two after the December 6 letter was sent, he met Ms. Shipione as she was waiting outside his office and she introduced herself to him. Mr. Ewell stated that Ms. Shipione told him that she knew he didn't write that letter and had heard that he was a "good guy." She then told him that she wanted to talk with him about these issues so they agreed to have lunch, but Mr. Ewell never followed up with this discussion.

Mr. Schachter noted that the December 6 letter does not respond to Ms. Shipione's allegation that under MP-2 the City would not appropriately fund the pension system. Mr. Ewell responded that the City had just entered into an agreement with CERS to fund the pension system in this manner, so he did not need to respond to this allegation because the Council was already aware of these issues. Mr. Schachter showed Mr. Ewell a letter from Ms. Shipione to him, dated December 31, 2002 (Exhibit 8), and asked if he had ever reviewed this letter. Mr. Ewell responded that he remembered this letter but did not think that he focused on this issue any further, and went back to the other issues he focused on. Mr. Ewell recalled receiving this letter, but stated that he sent it to Ms. Lexin and possibly Mr. Uberuaga and did not recall giving any further thought to this issue.

Wastewater Issues

Mr. Schachter asked Mr. Ewell when he first became aware that the City's rate structure was not in compliance with state guidelines. Mr. Ewell responded that he did not recall when he first learned of this information; he only recalled discussions in Closed Session about a letter the City received stating that it needed to fix its rates. Mr. Schachter then showed Mr. Ewell the Sewer Cost of Service Stakeholders' Group Report, dated May 3, 2001 (Exhibit 9), and asked if he recalled hearing about the City's non-compliance with state guidelines any time before the discussions concerning the letter from the state indicating the City's non-compliance. Mr. Ewell replied that he had never reviewed this document, and although he had a vague

recollection about a Cost of Service Study (COSS), he was not aware at that time that the City's rate structure was non-compliant. Mr. Ewell stated that he was not aware if similar studies had been performed in the past. Mr. Schachter noted that this COSS (Exhibit 9) concluded that the City was not in compliance with loan and grant covenants, and asked Mr. Ewell if he was aware of this fact. Mr. Ewell stated that he was not aware of this fact at that time, but later came to learn of it. He explained that this was another example of the balkanized organization of the City. Mr. Ewell stated that Mr. Loveland dealt with these kinds of issues and the Water and Wastewater Departments reported to him. Mr. Ewell explained that because the City had also hired Richard Mendes (Deputy City Manager), who dealt with this issue, Mr. Ewell had never become involved.

Mr. Ewell was next shown a Sewer Cost of Service and Rate Design Study authored by Black & Veatch, dated November 30, 2001 (Exhibit 10). Mr. Ewell stated that he might have seen this report at the time it was released, but did not recall. Mr. Schachter directed him to the second paragraph of the Executive Summary, which discussed the City's need to comply with State Water Resources Control Board (SWRCB) guidelines. Mr. Ewell stated that he might have been made aware of the need to change the City's rates, but he did not recall being aware of this issue.

Mr. Ewell was then shown a letter from Black & Veatch dated January 15, 2002, regarding the Sewer Cost of Service Study (Exhibit 11), and a memorandum from Mr. Mendes to Councilmember Frye dated April 18, 2002, also regarding Cost of Service reports (Exhibit 12). Mr. Schachter told Mr. Ewell that he was going to describe certain events and ask him what, if anything, he could recall about the events mentioned. Mr. Schachter stated that on January 29, 2002, Mr. Kahlie and Ms. Salt made a presentation to the Council about the risks of non-compliance. Mr. Ewell responded that he remembered closed session discussions with Mr. Kahlie, Mr. Loveland, and Mr. Mendes about the City's need to meet certain obligations, but did not recall having these discussions with Ms. Salt. He did not recall specifically who made the presentation to the Council, but recalled that the Council directed the City Attorney's Office to determine if the City was legally obligated to change its rates.

Mr. Ewell stated that the Council was informed by the January 29 presentation that the Cost of Service Study suggested that rates needed to be changed because the allocation was not appropriate. Mr. Ewell did not recall that the risk of accelerated repayment of loans and grants was discussed, but stated that it might have been. Mr. Schachter asked if Mr. Ewell recalled the reaction of the Mayor and Council to this presentation, and Mr. Ewell responded that he did not recall any mood or tone, only that the Council directed the City Attorney's Office to give an opinion. Mr. Schachter asked if the Council said "let 'em sue us" at this meeting, and Mr. Ewell replied that he didn't recall. Mr. Schachter clarified that this comment would have been directed towards the state regulators, but Mr. Ewell still did not recall any such comment.

Mr. Schachter asked Mr. Ewell if he recalled being troubled by the Council's response to the January 29 presentation. Mr. Ewell replied that he was not, and explained that this issue was not his "forte." He did not know what "BOD" was, and it sounded to him as though the City was on the path to addressing any problems, so this issue did not "raise any red flags." Mr. Schachter asked why the City did not simply change its rates, and Mr. Ewell responded that he did not know. Mr. Ewell recalled learning at some point that rate changes would have been cost-neutral and would have involved shifting costs from residential to business

users. Mr. Ewell recalled that Kelco was “doing a major push” and it had stated that the proposed rate changes would put it out of business. Mr. Schachter then asked Mr. Ewell if the Mayor was sympathetic to Kelco. Mr. Ewell stated that the Mayor wasn’t “sympathetic,” but the Mayor took the position that “this is my view now.” Mr. Ewell explained that the Chamber of Commerce was on one side of this issue and labor was on the other, so the Mayor was very careful with this issue, and Mr. Ewell thought that this was why the “convoluted process” of stakeholder groups was undertaken. Mr. Ewell did not remember having a sense that the process of changing the City’s rates needed to be slowed down. He did not know if Kelco had given financial contributions to the Mayor or Council members.

Mr. Schachter directed Mr. Ewell to the April 18, 2002 memorandum from Mr. Mendes to Councilmember Frye (Exhibit 12), and asked if Mr. Ewell knew why this memorandum was sent to Councilmember Frye. Mr. Ewell responded that he did not know, but stated that “to her credit, Donna Frye was asking questions about” the COSS. Mr. Ewell recalled that during closed session or during a break, Ms. Frye complained that a draft of this report was being suppressed. After Ms. Frye made her request, Mr. Ewell went to Mr. Kahlie and got a copy of the COSS and sent it to Ms. Frye. Mr. Ewell remembered telling Ms. Frye that there were no hidden issues and that the draft COSS had never been issued. Mr. Ewell recalled that there were issues with errors in the disclosure statements around that time, and he recalled writing a memo stating that the COSS had never been issued.

Mr. Schachter asked Mr. Ewell if he was aware, around April 2002, that the City was paying consultants to study wastewater rates who concluded that the City needed to change its rates, yet the City did not act. Mr. Ewell responded that “that’s not how I would frame it,” and stated that he knew that Black & Veatch was performing these studies. Noting that a similar study was performed for the City in 1998 and that the City had known since that time that it needed to change its rates, Mr. Schachter asked Mr. Ewell why the City took so long to make the change. Mr. Ewell responded that he did not know, and that in April 2002 he was not aware that prior studies had been performed on this issue. Mr. Ewell stated that he was made aware in 2001 or 2002 that the City needed an updated COSS because there was a draft COSS that had not been released. Mr. Ewell stated that he was copied on Mr. Mendes’s memorandum (Exhibit 12) because of protocol.

Mr. Schachter showed Mr. Ewell an email from Dennis Kahlie dated November 8, 2002, which transmitted as an attachment a document entitled “Salient Points Sewer Cost of Service Compliance Issue” (Exhibit 13). Mr. Schachter also showed Mr. Ewell a November 13, 2002 email from Mr. Kahlie which transmitted a revised version of his “Salient Points” (Exhibit 14). Mr. Ewell stated that he did not review these emails at the time they were sent, and only saw the “Salient Points” after his interview with the FBI. In preparation for his interview with the FBI, Mr. Ewell asked Mr. Mendes for all relevant notes and records, and these emails were among the materials Mr. Mendes provided him.

Mr. Ewell was shown a memorandum from Ms. Vattimo and Ms. Salt to the Mayor and Council, dated November 14, 2002, regarding the litigation exposure facing the City as a result of non-compliance with SWRCB guidelines (Exhibit 15). Mr. Ewell stated that he did not see this memorandum at the time it was sent; he only saw it during preparation for his interviews. Mr. Ewell did not remember being aware of the risk that the City’s loans and grants might have been recalled, or why this issue was removed from the Council agenda.

Mr. Ewell was shown a memorandum from him to the Mayor and Council dated November 22, 2002, transmitting a draft Sewer Cost of Service Study (Exhibit 16). Mr. Ewell stated that after Ms. Frye had alleged that the City was withholding a draft COSS, he obtained this document from Mr. Kahlie and sent it to Ms. Frye. Mr. Schachter asked Mr. Ewell how the document came to be handstamped "draft" on every page. Mr. Ewell responded that he did not know, and was always told that this report had not been completed or released. Mr. Schachter asked specifically if Mr. Ewell had told Mr. Kahlie to stamp this report "draft," and Mr. Ewell responded that he was told the document was a draft and did not tell anyone to stamp it as such. He stated that he did not read this document.

At this point, Mr. Friese stated that certain correspondence from the state around that time seemed to grant the City additional time to comply and "take away the urgency." Mr. Schachter then asked Mr. Ewell if he was aware that the state was under a mistaken impression concerning the City's rates at that time. Mr. Ewell responded that he was not. Mr. Ewell stated that he did not review the disclosure relating to the June 2003 Sewer Revenue Bonds, nor did he review any disclosure documents. He stated that this was an example of the balkanized organization of the City.

Mr. Ewell was shown a memorandum from Les Girard to the Mayor and Council dated March 26, 2004, regarding continuing disclosure reports for MMWD (Exhibit 17). Mr. Ewell stated that he had no role in preparing the City's Voluntary Disclosure, and did not review it. Mr. Ewell explained that before he became the City Manager, he did not get involved with the OS (Offering Statement) or POS (Preliminary Offering Statement) or speak to the rating agencies. He stated that he was copied on this memorandum because of protocol. Mr. Schachter asked if Mr. Ewell had any knowledge about the veracity of the statement that the City had been trying to comply with state requirements for wastewater rates for the last sixteen years. Mr. Ewell responded that he did not.

The City Budget

Mr. Schachter asked Mr. Ewell to describe the City's budgeting process during his tenure. Mr. Ewell stated that the City was always trying to "get by one more year," and only utilized short-term budget planning. He explained that San Diego had a very modest revenue base and that the City relied on tourism and the transient occupancy tax. He stated that "every year was a struggle," and that "budgeting was less than honest." As an example, Mr. Ewell stated that the City underfunded firefighter and police overtime, which was eventually paid out of savings from the salary appropriation. On the other hand, parks and recreation expenditures were always fully funded, but the City could not fund all expenditures because there was not enough revenue. Mr. Ewell explained that some Departments went over budget and others did not, so the City could reconcile them at the end of the year. He stated that he never liked this approach and did not agree with it. Mr. Ewell stated that when he became City Manager, he hired financial advisors and examined the City's future expenses, including full pension funding and deferred maintenance, in the hopes of developing a five-year budget plan. When he took this plan to the Council, it was met with "great resistance."

Mr. Schachter asked Mr. Ewell if the City's budgeting failures contributed to the underfunding of the pension system. Mr. Ewell stated that when he presented his five-year plan to the Council, he walked through a ten-year history of the City's finances and explained that

MP-1 was originally entered into because the City lacked the revenue to pay for the services it was used to. At the time of MP-1, the pension system was 90% funded, and the City's solution was to reduce contributions so that it did not have to cut services or raise taxes. Mr. Ewell further explained that the City's budgeting had led to millions of dollars in deferred maintenance and pension underfunding, so it was necessary to rethink the budget process. Mr. Ewell stated that he sent the Council materials but could not get it to approve a five-year plan, and as a result the City continues to face a structural budget deficit because it is difficult to cut services or raise taxes in San Diego.

Mr. Schachter asked Mr. Ewell if he was concerned about the use of enterprise funds to support the general fund through right-of-way fees. Mr. Ewell responded that when he began at the City, the right-of-way fee from the enterprise fund to the general fund was approximately \$17 million. The Council had treated right-of-way fees as franchise fees, but when the *Roseville* case was decided, the Council "decided to get out of it." Mr. Ewell noted that during his time in the City Manager's Office, there were allegations from libertarians that right-of-way fees were a "backdoor" way to take money from the enterprise funds. Mr. Ewell had Mr. Mendes perform a study to determine whether the City was engaged in this type of transaction, and the study concluded that the City was not. Mr. Ewell explained that he was assured that there was no commingling of funds and that the City was handling this issue appropriately.

Remediation

Mr. Schachter asked Mr. Ewell if he had any suggestions for remediation. Mr. Ewell responded that many of his suggestions had already been implemented by the City. He stated that the main people involved or allegedly involved in these issues had left the City, so personnel remediation was complete. He noted that the Disclosure Working Group forced City employees to work together and communicate across the City's organization. He stated that the structure is in place, and the City needs to be held accountable to this structure going forward. He observed that San Diego was "not unique in what happened," and is "a harbinger of what is going to come across the nation." He speculated that Sarbanes-Oxley would come to be applied to governments, and stated that when the City's remediation is complete, it would be the "gold standard."

Mr. Schachter asked Mr. Ewell if there had been any remediation regarding the certification of financial reports. Mr. Ewell responded that the Council addressed this issue, and now the Auditor & Comptroller must certify the City's financial statements. Mr. Ewell stated that having "lower-level" people certify financial statements would not be effective remediation because they would all be indemnified. He stated that the highest-level official should be made to certify financials to hold him accountable. Mr. Ewell observed that he has put these lessons into practice at his current employment. He stated that he reads everything he signs carefully and asks questions, even if the people who contributed the information were "well-meaning."

Mr. Schachter asked Mr. Ewell if there were any other issues he felt were relevant to the Audit Committee's investigation. Mr. Ewell responded that questions had been raised asking why the City did not terminate the employment of certain personnel after allegations of improper behavior had surfaced. Mr. Ewell explained that, in contrast to the private sector, governmental employment is covered by state personnel laws. In California, at-will employees

can be released without cause, but if an employee is to be released for cause, such cause must be demonstrated. Mr. Ewell stated that even though he wanted to remove certain employees during his tenure, because Mr. Aguirre had made allegations of illegal acts, he was "hamstrung" and could not remove these individuals. Mr. Ewell explained that at some point during his tenure, he had met with Ms. Lexin, Ms. Vattimo, Ms. Webster, and Ms. Frazier and told them that he would assume they were innocent, but a time might arise when the interests of the City dictate that they be released. At that time, Mr. Ewell told these individuals that he would provide them the opportunity to resign prior to terminating their employment. During the time period in which City Attorney Aguirre began to publish his Interim Reports, Mr. Ewell told these individuals that it was a good time for them to leave. Mr. Ewell stated that they all agreed to resign, even Ms. Webster who thought it was not right or fair that they be asked to leave. The day after they left, these individuals, with the exception of Ms. Frazier, were indicted.

Mr. Ewell recalled receiving a note from City Attorney Aguirre after the departure of these employees to the effect of "great job, good start, now we need to get the others." Mr. Ewell remembered asking the District Attorney why she did not give him a "heads-up" that indictments were coming, and she responded that protocol prohibited her from giving advance warning.

Mr. Ewell also recalled an instance where the City Attorney's office was very slow in responding to a subpoena for documents. Mr. Ewell explained that it had been the practice that City departments would turn their documents over to the City Attorney's Office, which would distribute them in accordance with the subpoenas received. Mr. Ewell stated that the City Attorney's Office did not respond to his inquiries regarding the delay and opined that "things wouldn't leave the City Attorney's Office." As a result, Mr. Ewell created a new records protocol where copies of documents were sent to the City Attorney's Office, but the departments would send documents directly to the entities from which requests had been received.

Allegations of Improper Destruction of Email

Mr. Ewell asked if he could take a moment to explain his perspective regarding allegations that he improperly destroyed emails when he left the City in 2005, and Mr. Schachter granted him this opportunity.

Mr. Ewell explained that on November 27, 2005, he was in his office and sent an email to let others know that his records had been secured both on a computer hard drive and in hard copy that his staff could access. His last task before leaving was to remove the emails from the desktop of his computer. Mr. Ewell stated that under the City Charter and state law he was charged with a duty to protect confidential communications, and as a result he sought to remove emails from attorneys or City personnel from his desktop. He had previously overseen the copying of all of his emails that related to the various investigations. Before he deleted the emails from his desktop, Mr. Ewell sent an email to Rey Arellano (Chief Information Officer) to inform him that these emails were going to be deleted. Mr. Ewell stated that Mr. Arellano or his staff responded that copies of these emails were going to be saved on the "H drive." Mr. Ewell deleted his emails from his desktop after receiving this assurance.

Mr. Ewell explained that he had hired the firm of NTI Breakwater to assist with the electronic document collection that was done as a result of government investigations. Mr.

Ewell told NTI employees to work with the City's computers after-hours to minimize the disruption of having so many people in the City's offices. Mr. Ewell recalled a conversation during that time that he had with a member of NTI's staff, who explained to him that NTI could recover written-over or deleted information. Specifically, Mr. Ewell knew that NTI was able to retrieve Mr. Uberuaga's emails from as far back as 2002 that others thought were irretrievable. Mr. Ewell stated that it did not make sense to think that he would have improperly deleted emails because he knew that NTI would be able to retrieve them.

When he heard the allegations that he had improperly destroyed email, Mr. Ewell was "livid" and explained himself publicly. Mayor Sanders started an investigation of this matter and Mr. Ewell was contacted by a police sergeant to schedule a meeting. Mr. Ewell told the sergeant that he would cooperate and to set up a meeting time with his lawyer. Before Mr. Ewell had a chance to meet with the sergeant, his lawyer told him that his testimony was no longer needed because the police had interviewed everyone else and Mr. Ewell had been exonerated. The police department then told Mr. Ewell that they were preparing a report and would send a certified copy to him. Mr. Ewell later heard a rumor that this report was not going to be made public, so he called the police department which confirmed that the report would not be released. Mr. Ewell stated that the City might not have wanted to release the report because it was embarrassed that the accusations were baseless, and believed that political rather than factual reasons caused the City to choose not to release this report.

Mr. Frieese stated that when the allegations were first made, he had called the Information Technology Department to investigate. He was told that backup tapes were re-written every two weeks to ensure the integrity of the system. He stated that he had a conversation with the investigator of this matter, who told him that Mr. Ewell had done nothing wrong and that the blame lied with the IT Department. He recalled that William Lansdowne, the Chief of Police, told him at that time that a certified report was forthcoming.

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